

## **REMARKS**

The Office Action dated October 1, 2009 has been received and reviewed. This response, submitted along with a Request for Continued Examination (RCE), is directed to that action.

Claim 1 has been amended and claim 4 has been cancelled. Support for the amendment to claim 1 can be found throughout the specification, and in claim 4 as originally filed. No new matter has been added.

The applicants respectfully request reconsideration in view of the foregoing amendment and the following remarks.

### **Claim Rejections- 35 U.S.C. §103**

The Examiner maintained the rejection of claims 1-14 under 35 U.S.C. §103(a) as obvious over Ganesan et al. (US 2001/0033880 A1) in view of Bishov et al. (US 3,852,502) and further in view of Dake et al. (US 5,424,082), in light of Null (The Antioxidant Vitamin). The applicants respectfully traverse this rejection.

The process of the presently claimed invention, as amended, now requires that the tea is treated with an emulsion comprising *synthetic* antioxidant. Contrarily, Ganesan uses only a natural antioxidant, ascorbic acid, in his method. The applicants respectfully submit that a skilled artisan would not have the requisite motivation to modify Ganesan by substituting a synthetic antioxidant for Ganesan's natural antioxidant to achieve the presently claimed invention.

Ganesan is directed to a process for manufacturing a cold water soluble black tea. In his process, Ganesan uses ascorbic acid, a natural antioxidant, as a solubilizing

compound, which modifies the black tea in order to enhance the solubility of the tea in cold water. On the other hand, the applicants use a synthetic antioxidant in order to prevent the formation of pacha taint during storage. A skilled artisan would not have substituted Ganesan's ascorbic acid with a synthetic antioxidant because a synthetic antioxidant is not a solubilizing agent, and substituting the synthetic antioxidant would render Ganesan unsuitable for its intended purpose. Indeed, if a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Furthermore, Bishov only teaches that an antioxidant mixture can be emulsified with a protein to stabilize corn oil. Bishov does state generally that antioxidants can be used to stabilize "food products", but this is an extremely broad and unspecific teaching, and the skilled artisan would not have a reasonable expectation of success when using this type of emulsion on tea leaves.

Based on the foregoing reasons, the applicants submit that the presently claimed invention is in condition for allowance, and such favorable action is respectfully requested. If any issues remain, the resolution of which may be advanced through a telephone conference, the Examiner is invited to contact the applicant's attorney at the number listed below.

#### **CONDITIONAL PETITION FOR EXTENSION OF TIME**

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully requests that this be considered a petition therefore. The Commissioner is authorized to charge any fee(s) due in this connection to Deposit

Account No. 14-1263.

**ADDITIONAL FEE**

Please charge any insufficiency of fees, or credit any excess, to Deposit Account  
No. 14-1263.

Respectfully submitted,

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By                     /Mark D. Marin/                    

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